IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8199 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ISHWARBHAI C. PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8199 of 1992

MR SH SANJANWALA for Petitioner No. 1

..... for Petitioners No. 2-3

MR UI VYAS for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 05/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

This Special Civil Application is preferred by the petitioners for quashing and setting aside the impugned order Annexure `F' (which is not annexed with the petition). The petitioners have prayed for issuance of Writ directing the respondents to decide the applications filed by the petitioners under Sec. 28(A) of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) in accordance with law.

The short facts are as under :

Notification under Sec. 4 of the Act was issued on 29.10.83 whereby the lands belonging to the petitioners were acquired for public purpose. Thereafter, notification under Sec. 6 of the Act was published on 9.11.84. Ultimately, by an award Annexure `C', which was made under Sec. 11 of the Act on 31.8.85, the amount of compensation was determined. It is averred in the petition that different amounts were fixed for irrigated and non-irrigated lands.

It is contended by the petitioners that against the award, applications were submitted under Sec. 18 of the Act by other claimants and the learned Jt.District Judge, Sabarkantha at Himatnagar, by an award dated 1.1.90 determined the market price of the lands Rs.400/- per Are for non-irrigated lands and @ Rs.550/per Are for irrigated lands. The copy of the award made by the Reference Court is placed on record at Annexure `B'. It is further contended that after receiving the copy on 2.4.90, the applications (Annexure `E' collectively) were made to the Special Land Acquisition Officer pointing out that the petitioners accepted the amount of compensation under protest upon receiving notices under Sec. 12(2) of the Act and that their applications for reference under Sec. 18 of the Act were rejected. It is specifically averred in the petition that the applications under Sec. 28(A) of the Act were maintainable and hence the Special Land Acquisition Officer was requested to award the compensation in consonance with the compensation awarded by the Reference Court.

In the aforesaid applications, it is specifically stated that the compensation applications were made but on one or the other reason, the same were rejected and were not forwarded to the District Court. It was prayed that as per the award made by the Reference Court, the amount be awarded. In para 3.2, it is specifically

averred that various applications were made to the second respondent for reference under Sec. 18 of the Act and the said applications made by the petitioners were rejected.

It is required to be noted that Annexure `A' dated 12.7.91 (3 orders with reference to different petitioners are placed on record) was issued to the concerned petitioners informing that the application submitted under Sec. 28(A) dated 2.4.90 being not in consonance with the provisions contained in the law, are rejected. Thus, they were informed that the applications are not entertained.

The learned A.G.P. appearing in the matter submitted that it is specifically pleaded in the petition on oath that the applications were made under Sec. 18 of the Act, however, very intelligently they have not stated as to on what grounds the applications were rejected. His further grievance was that they have not placed on record copy of the application or the order made by the Special Land Acquisition Officer. He further submitted that considering the admission made by the petitioners themselves that applications under Sec. 18 of the Act were made and were rejected, this petition is required to be rejected as Sec. 28(A) contemplates that benefit is to be given to the claimants who have not made applications under Sec. 18 of the act. Our attention is drawn to the decision of the Apex Court in case of THE SCHEDULED CASTE CO-OPERATIVE LAND OWNING SOCIETY LTD. BHATINDA V/S UNION OF INDIA AND OTHERS REPORTED IN AIR 1991 S.C.730 wherein the Apex Court has pointed out that :

" It is obvious on a plain reading of Sub-sec.(1) of Sec. 28(A) that it applies only to those claimants who had failed to seek a reference under Sec. 18".

He drew our attention to the decision of the Apex Court in case of SMT.BHAGTI (DECEASED) THROUGH HER L.RS. JAGDISH RAM SHARMA V/S STATE OF HARYANA REPORTED IN AIR 1997 S.C.1793 wherein the Apex Court has pointed out that:

"Only those claimants who had failed to apply for a reference under Sec. 18 of the Act are conferred with the right to apply for redetermination under sec. 28-A(1)."

The learned A.G.P. submitted that the petitioners did

not bother to challenge the order made by the Special Land Acquisition Officer when their applications were rejected under Sec. 18 of the Act. They were required to challenge the orders passed in applications submitted by the applicants under sec. 18 of the Act. Once they have accepted the compensation awarded by the Special Land Acquisition officer, it is not open for them to challenge, is the bone of contention raised by the learned A.G.P. He further contended that as the order made under Sec. 18 of the Act is not challenged, the petition should be rejected on the ground of acquiescence.

In case of BABUA RAM AND OTHERS V/S STATE OF U.P. AND ANOTHER REPORTED IN 1995 AIR SCW 65 the Apex Court pointed out that :

> "Sec. 28-A is a complete Code in itself providing substantive right to an interested owner who received compensation under Sec. 18 without protest for higher compensation, and remedy has been provided to make a written application within the prescribed period. The non-obstante clause lifts the rigour of the bar created by Sec. 18(1) and the second proviso to Sec. 31 and makes him eligible to be at par with his neighbour to claim parity for compensation to the land similarly situated as the land covered by the court award."

The learned A.G.P. submitted that in view of the admission made by the petitioners themselves, it is clear that the applications were made under Sec. 18 of the Act and therefore the provisions contained in Sec. 28(A) cannot be attracted. He further submitted that petitioners have not stated as to what was the date of making applications under Sec. 18 of the Act and the date of rejection of the applications.

It is required to be noted that the contention raised by the petitioners herein is that without hearing the petitioners, the applications were rejected. No opportunity has been given to the petitioners to make out their case. The order Annexure `A' collectively dated 12.7.91 does not disclose that opportunity of hearing was given to the petitioners. No reply is filed by the respondents. We are of the opinion that where property rights are to be determined or the amount of compensation is required to be determined, the claimants should have been given an opportunity of hearing before the order is passed. In this view of the matter, we allow this

application with a direction to the Special Land Acquisition Officer to decide the application after giving an opportunity to the petitioners. The exercise shall be completed within a period of 3 months from the date of receipt of writ. The Special Land Acquisition Officer shall see that proper opportunity is provided to the applicants to put up their case. Rule made absolute accordingly. No order as to costs.

(B.C.PATEL, J)

(SHARAD D DAVE, J)

srilatha